

Michelle Harven: This is Force for Hire.

Desmon Farris: A deep dive into private military contracting and how it's transforming the battlefield.

Michelle Harven: I'm Michelle Harven.

Desmon Farris: And I'm Desmon Farris. Today we'll be exploring facet of contracting that's often overlooked, health. What happens when military contractors get hurt overseas and how do contractors receive care for something like PTSD. As the number of contractors rise, so too are the number of people dealing with the ramifications of working in dangerous environments and as we've noted before, more contractors have died in America's post-9/11 wars than servicemen, even though these deaths often go unobserved.

Michelle Harven: This inattention leaves contractors particularly vulnerable. In January, The Bureau of Investigative Journalism, in partnership with The Atlantic, reported that the company Sobra International Security effectively vanished after 15 of its contractors were killed. Survivors and family members took legal action claiming the company did not honor insurance settlements and were negligent in insuring safety.

Michelle Harven: And this sort of story isn't an anomaly. In 2009, ProPublica exposed an insurance system profiting off civilian contractors, reporting insurers collected more than \$1.5 billion in premiums paid by US taxpayers while rejecting 44% of claims from contractors involving serious injuries.

Desmon Farris: While in 2016, The Intercept reported that Ugandans were fighting for compensation after being wounded on American bases in Iraq. As maybe guessed, four contractors had a particularly hard time with the US compensation system. So what's going on here? Isn't there a safeguard to protect the men and women doing government contracting work?

Desmon Farris: Well, kind of. It's called the Defense Base Act and we brought Doug Grauel to explain what it is and how it works.

Doug Grauel: I'm a lawyer from Concord, New Hampshire and I help contractors from all over the world with work injury claims under the Defense Base Act.

Michelle Harven: I wanted to sort of get the definition of the Defense Base Act out of the way. Could you just do a brief description of how you describe it to people?

Doug Grauel: The Defense Base Act basically takes the Longshore and Harbor Workers' Compensation Act and uses it as the substantive workers' compensation law for injuries that occur to civilian employees of contractors with the United States. They're mostly military contractors but not exclusively. Most of the time they're

injured on military bases overseas or territory that is occupied by the US military.

Doug Grauel: But the Defense Base Act itself really does nothing but say if you fall into the right category and if you get hurt at work, then you go to the Longshore and Harbor Workers' Compensation Act for your workers' comp claim.

Michelle Harven: So, the Defense Base Act just sort of routes people to another act?

Doug Grauel: Exactly. It takes a specific set of people, mostly military contractors, some NGOs are covered. People who are working on pursuant to public works contracts that the US government is funding or is involved in overseas and it says if you get hurt at work, you go to the Longshore Act for the substantive workers comp, you know, nuts and bolts of how that gets processed.

Michelle Harven: Am I mistaken that the Defense Base Act requires American contractors working overseas to be insured?

Doug Grauel: Generally speaking, yes. If you're an employer, a military contractor employer sending people overseas, you'll be required to have Defense Base Act or DBA insurance. That is rarely itself a problem. It's unusual to see a case where there isn't any insurance. Almost all the time, that's kind of a non-issue. Almost all the time the Defense Base Act by itself is not where your focus is. It winds up being, really everything's ... That's a given almost and the Longshore Act is what determines is the injury work-related and is the medical treatment reasonable and does the person have an earning capacity at this point or not and that kind of stuff.

Doug Grauel: The DBA actually dates to 1941, so it's been around for quite a long time. The basic purpose of it is, you know, when you have a lot of private employment associated with the military, which we do, and have been increasingly since around that time. There are people doing food service and construction and vehicle repairs, all kinds of things who are not military members and when they're hurt overseas, there really is no way to apply local workers' comp law to them. It wouldn't quite make sense.

Doug Grauel: And so, the DBA takes the Longshore Act, which is a federal and therefore uniform workers' compensation system that's already there because it's been around since the 20s, so the DBA says, all right we have this existing system, the Longshore Act, we'll just apply that to everybody who's hurt in all of these far flung places, as long as it's on the right kind of work which is basically contracted by the US government.

Doug Grauel: And we'll use that to sort out their work injuries.

Michelle Harven: Where are the issues taking place? Why do people come to you?

Doug Grauel: A lot of times when people come to me, I would almost say they're two categories. Some people have no idea what the Defense Base Act is. They start to get mail from the Longshore and Harbor Workers' Compensation division of the office of workers' compensation programs from the United States Department of Labor and they've never been longshore or harbor workers and so they're wondering what is this about.

Doug Grauel: The answer is, they got hurt or ill or something happened while they were overseas contractor employees and the Longshore Act is really ... It's the longshore division of the Department of Labor that's processing the case. So that's number one is that they're just confused because they're not familiar with any of this.

Doug Grauel: Others realize they are familiar with the Defense Base Act and they just need help dealing with their workers' comp claim.

Michelle Harven: You had talked a bit about your experience, you talked about too like how many contractors you work with yearly, that these are pretty in depth sort of cases. Is that right?

Doug Grauel: Yeah. That is right. A DBA case tends to be big. The medical records get extensive. For whatever reason, these cases involve lots and lots of hours of work. They tend to be pretty hard fought from the insurance company side, often times the insurance company has a lot, they simply have a lot of money at stake, that's what it boils down to. The reason being, overseas work tends to pay very well and so if the insurance company is found to be responsible to pay benefits, they're often times looking at having to pay quite a bit per week indefinitely. Who knows how long it's going to last?

Doug Grauel: The basic standard would be, if somebody is hurt in their overseas job, and their injury prevents them from being able to return to that job, at that point, the burden is essentially on the insurance company to show what else they could do that would pay as much because the work is so high paying a lot of times that's difficult for the insurance company to do and that's where they dig in their heels and resist the claims.

Doug Grauel: I hate to sound cynical, but the insurance company is not on your side. A lot of times when people are hurt, in any kind of work, this is true of regular state comp claims too, a lot of times when people are hurt at work, they have an expectation that some kind of supportive system is going to descend around them and somebody will be there to help them get back to work. Unfortunately, a lot of times that's just not the case. If the insurance company sees an opportunity to deny the claim outright, they will often take that and whether they realize it or not, the injured worker or contractor is ... They're in an adversarial system. This is all an adversarial system. The Longshore Act, the DBA is providing a set of benefits if the injured worker can prove that the right set of things happened.

Doug Grauel: If you can prove that you were hurt at work and now unable to, in the case of DBA, continue in that job overseas, then as an initial matter, you're entitled to two thirds of your wages and medical care until you can return to that kind of work, but only if you can prove it in the context of this adversarial system where you find yourself.

Doug Grauel: A lot of times where the dispute will come up is not so much over the initial injury but as to whether ongoing disability or treatment is still a result of the originally injury. That's common, you can take a back claim or injury to the arm or leg and the insurance company will be arguing that you've healed from it. You could go back to your overseas job, whereas, you may not feel ready to do that. You may still be receiving medical treatment and so the dispute will be over the extent of your disability and the need for ongoing medical treatment.

Doug Grauel: So, the proof of the initial event is not so hard. The proof of the initial claim is not so hard, but at some point the insurance company starts to become more and more resistant to continuing the claim, and a lot of times that's when people come to me.

Michelle Harven: This taxpayer funded system of contractor care has been scrutinized. A 2009 Pentagon study suggested the government provide its own insurance, estimating a sweeping overhaul could save 250 million dollars a year and in 2013, representative Elijah E Cummings, introduced legislation that would transition overseas government contractors to a federal self-insurance program.

Desmon Farris: So, are contractors using the system? Well the Department of Labor actually keeps stats on this. In 2018, there were over 6000 Defense Base Act cases. To put this in perspective, there were over 47,000 contractors supporting the Department of Defense but Doug notes some contractors are not fully aware of this claims process.

Doug Grauel: I have to tell you, I'm very surprised again and again at how many people go overseas and do these jobs and aren't aware of the DBA. Even after they get hurt and come home, they really aren't aware of it and that's their first, you know, they'll maybe get something from the Department of Labor telling them there's a notice of injury that's been filed, or something like that, and that's when it first comes to their attention and I've always kind of thought that it's a real disservice to not educate people before they go that if you get hurt, here's the process. It doesn't seem like it happens the way you would hope.

Michelle Harven: And so what should contractors do-

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Doug Grauel: ... like it happens the way we would hope.

Michelle Harven: And so what should contractors do if they get injured?

Doug Grauel: If they get hurt, one of the most important things, the first thing is to get whatever kind of medical treatment you need right on the spot of course, but as soon as you can, you've got to give notice to the employer. There's not really a terribly formal requirement of how that notice gets given. A lot of the time when these events take place, it's obvious that the employer knows about it. They might have you fill out forms. Now, they might be the ones who direct you to a particular place to get medical treatment. They might be the ones who send you home. You know, I've had that happen more than once, that the injured worker, some of them don't even feel that they need to leave wherever they're working and return to the US but the employer, you know, if you can't be 100% we can't have you here. You're on the next flight out. So notice, giving notice is important to do. You have to give notice within 30 days under the statute. There are some extensions and ways that doesn't necessarily, it's not necessarily fatal to your claim if you haven't done that, but it's a good idea.

Doug Grauel: Sometimes PTSD is a little different because it can be a delayed manifestation. So sometimes people come home and they're having symptoms and they don't quite put the whole thing together until quite some time later. And the advantage of that is that claims that might otherwise be too late to file are sometimes still possible in PTSD cases because the injured worker is not completely aware of what they're going through and what the connection is to the stress of the employment for a long time after they get home.

Michelle Harven: Is there any sort of difference with having to file a claim for sexual assault or anything that maybe the contractor should know about for that sort of case?

Doug Grauel: There's nothing different in the mechanics of how that case gets processed. The difference comes in that the nature of the proof is obviously much more difficult and painful emotionally for that individual. Employers can test those claims vigorously and kind of ruthlessly, if you ask me. I guess the short way to put it is that insurers and employers absolutely hate those cases. They don't want to be within a million miles of that kind of allegation, that kind of charge. And so they're very hard, just hard emotionally on everybody, especially on the injured worker obviously. But you can expect a really vigorous fight, a nasty fight in those cases, but they're otherwise not fundamentally different. They're just hard.

Doug Grauel: The zone of special danger is basically when you're in a war zone work environment, you are in a zone of special danger and essentially whatever injury or illness befalls you because of being in that location is covered, is considered work related. So for example, even something like if they have a workout room, a gym room at your base and you're in the gym, off duty hours, lifting weights or doing something and you injure yourself, if you work here at home in the US for whoever your employer is and you get hurt at the gym after work, that's not a worker's comp injury. It's not considered work related for what I hope are obvious reasons. But not so with DBA. When you're deployed overseas, pretty much the whole thing is the zone of special danger. And so that injury in the weight room off of work hours is still considered work related.

Doug Grauel: A sexual assault case could fall into, you know, a category where somebody might not realize it doesn't matter if they're after hours and they go out somewhere and in the town they go out to dinner and then some event befalls them. That is still considered work related even though you may not be on duty when it happens. I sit here and I kind of worry that somebody might think that they don't have a claim when maybe they do. And that's, I guess another reason why I always recommend, get some advice, get some advice, get some advice. There's so much going on in this set of laws that you really can't expect to figure it out on your own. It wouldn't be realistic or reasonable to think someone could do that.

Desmon Farris: Molly Dunnigan and Carrie Farmer of the Rand Corporation conducted a study on the health and wellbeing of private contractors working in conflict environments. They found that 72% of their respondents experienced incoming fire or bombing attacks, and 53% of US contractors reported suffering from a physical health condition due to their deployment.

Michelle Harven: These unique experiences of contractors may attribute to physical and mental health risks. There may be a perceived lack of support such as backup, a mistrust between teammates, particularly among local national contractors and unknown employment status. At the end of deployment, contractors also have to worry about being employable. So filing a claim could put that in jeopardy, but information on contractors' health has been limited, which is why the two were motivated to conduct this study.

Carrie Farmer: This is Carrie Farmer, and I'm a senior policy researcher.

Molly Dunnigan: And this is Molly Dunnigan and I'm a senior political scientist.

Michelle Harven: So can I have you talk about why you decided to research this area?

Molly Dunnigan: Sure. So we were aware that private security contractors were deploying in large numbers for many years of the Iraq and Afghan wars, two theaters of conflict where we had seen large proportions of post deployment health issues come up in the military population. And so we were interested to see that there was very little research on how these deployments were impacting contractors. And so we thought that there was a gap there that needed to be looked up.

Michelle Harven: Got you. And so let's go into what did you learn in your report on the health and wellbeing of contractors?

Carrie Farmer: So we conducted a survey of a private military contractors and to really understand both what are their deployment experiences of the contractor and to understand what they may have been exposed to as a contractor. So both in terms of experiencing combat situations as well as other types of exposures in terms of exposures to burn pits or other other things they may have encountered while deployed. And then from there we tried to understand what

types of mental health symptoms they might be facing and conducted screenings as part of the survey for PTSD, depression, and unhealthy alcohol use. And then we also asked a series of questions about physical health and their experiences receiving health care. So we also wanted to understand whether they had access to health care if needed, whether they had insurance that was provided by their companies and what it tried to really bring the study as a needs assessment of this population in terms of their health and wellbeing.

Molly Dunnigan: One of the most interesting findings was that post deployment mental health issues were fairly high in this population. So as Carrie noted, we did survey a population of private military contractors, they were multinational. So I think we had 25 countries represented in the survey and 512 individuals completed the survey. And of those 512 we found that 25% were screening positive for post traumatic stress disorder or PTSD. And this is much higher than what you would see in the military population where rates would range anywhere in the US from eight to 20% and they would be lower in the UK and other countries. So we found that this was really interesting. We also found that a lot of those individuals who were experiencing these issues were not being treated for them and that they were stigmatized from seeking treatment for them. So I believe the figure was something like 73% of those who are screening positive for PTSD were finding that they were concerned that their company or their supervisor at their company would think less of them if they sought assistance for these issues.

Molly Dunnigan: So that was one of the big findings. We also found that physical health issues were predominant in this community. Some of the biggest physical health issues that came across, or the most frequently reported, were respiratory problems and orthopedic problems, which as Carrie noted thinking about burn pit exposure in this population is perhaps not surprising.

Carrie Farmer: Yeah, and I'll also say in terms of access to healthcare, this is a trans national contractor population. So some of the contractors who responded to the survey live in countries where there is a national healthcare available. And then of course in the United States we don't have a national healthcare system. So there was a variation in terms of access to health insurance. So among US contractors, 21% did not have health insurance, that was neither provided by their company nor any other sorts of health insurance, which definitely affects access to receiving healthcare for these physical and mental health problems.

Michelle Harven: And how does that fit in with the Defense Base Act? Is it failing to help contractors?

Carrie Farmer: The Defense Base Act is really a worker's compensation program, so it's not ... They have to prove that the health condition that they have was something that was because of their employment as a US contractor in order to claim the compensation, we found that only a small portion of the contractors that we surveyed had submitted a claim and many of those were still in process at the time of the survey. So we didn't know the extent to which they had been

approved or not. But it's different than getting healthcare and routine healthcare for ongoing problems.

Michelle Harven: And were there any big surprises from the research that you did?

Molly Dunnigan: I think the biggest surprise was the high rates of PTSD amongst this community that are not being treated. As I mentioned, the rate that we found was 25% among our surveyed population. It does dovetail pretty closely with two other studies, smaller studies of private security contractors that have been sampled differently who were within one or two percentage points of 25%, so we have some confidence in that number. And it was just markedly higher than the rates that you see amongst the US or UK came military population, significantly higher. And the fact that this is not really recognized as being an issue amongst this population and the US in particular is utilizing private contractors to an unprecedented extent at this point. Associated with that, one of the really interesting things we found was that one third of our sample were deployed while they were completing the survey. It was an online survey, so if you had Internet access, you could complete it from wherever in the world you were, and of those 30-

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Carrie Farmer: ... Cleaned up from wherever in the world you were, and of those 33% that were currently deployed, I think almost 30% of those were screening positive for PTSD while they were on a deployment. So we found this to be potentially quite troubling. There's also an incentive for these individuals to continually deploy because they do not get benefits when they are not on a contract, so if they're on a two-month contract or a seven-month contract and they come home and they need healthcare, their best bet of getting continued healthcare is to deploy again and go on another contract. So it's sort of a self-feeding cycle there.

Michelle Harven: Yeah, sounds like a vicious cycle.

Carrie Farmer: And we also saw that there were high rates of stigma related to mental health problems, and this is not unique to the contractor population, this is something that the US military has been addressing over the last decade, is trying to reduce stigma associated with having a mental health problem and seeking mental health treatment. But we saw that as a real need among this population as well, really reducing some of the barriers of seeking mental health treatment, both by having access to healthcare and reducing stigma because what we found was that among those who had probable PTSD or probable depression, less than a third had received any mental health treatment in the previous 12 months.

Michelle Harven: There's stigma, but do you think there's a reason that contractors' health is often ignored?

- Carrie Farmer: One of the things that Molly and I had thought about during the study was that there seems to be a question about who has responsibility for this population. Companies, these individuals are employees of the companies while they're on a contract. So it could be that the companies are the entity that's responsible for this population, it could be that the US government or other governments who are issuing these contracts are responsible, and there just seems to be an issue around where the locus of responsibility is in terms of, where should the solutions come from? Is it the Department of State? Is it the Department of Defense? Is it the companies or some other entity entirely?
- Molly Dunnigan: Yeah, just to follow onto that, there is this big issue, it's known as duty of care within the industry, the private military industry, and there have been multiple conferences focused around this issue. We briefed the study book excessively within the US and within the UK to government officials and also to industry officials in both countries, and there was just continually this conversation of, "Well, it's really the other entity's responsibility. It's the company's responsibility. They should put together programs and de-stigmatize this actively for the contractors who work for them." And on the company side, they said, "Well, it's really the client's responsibility. They should be funding these types of programs and creating them for contractors themselves."
- Molly Dunnigan: The other thing that I will say, I mean, we did not look at this question specifically in the research, but as an output of the research, we published numerous media articles and there was quite a bit of press when the study first came out, and on a lot of the public commentary on those articles, you could see that there is some stigma against private contractors just as a whole, as a type of personnel. They're frequently thought of in the literature as "mercenaries" and there is a norm against accepting them, I think, societally to some extent. So while our research did not look into that, I think that there is sufficient evidence in the literature to back something like that up, that there's just sort of a societal stigma against that population of personnel.
- Michelle Harven: And did you have any recommendations after the research for contractors or companies?
- Carrie Farmer: We did have a number of recommendations. We argued that companies and the contracting entities that hire them, so the Department of Defense, for instance, should actively work to reduce stigma in making sure that contractors are feeling like it's okay and acceptable to seek out help for mental health problems. We also argued that companies should try to increase access to stress management and mental health resources, and we argued for looking into this topic in much more depth. This really was intended as a first cut sort of broad brush scope of the problem, so looking into it and digging into it in much more depth in future studies would be useful for the population.
- Molly Dunnigan: The other thing that I think is just worth reiterating is that there is so much that is unknown, and our study really made a big leap forward in terms of trying to explore some of these issues, but there are cautions that we have about

interpreting the findings. There's not a way for us to know whether the individuals that responded to our survey are truly representative of the contractor population as a whole. There's not a list of all private contractors to select from to do a really, from a research perspective, a truly random and representative sample to conduct the survey. So one of the things that we don't know for sure is maybe, are the individuals that responded to our survey worse off or better off than the population as a whole, and that's something that we don't know.

Michelle Harven: I know that it surveyed more than 650 contractors, but also maybe notes that we don't know how many contractors there are out there, so is it just maybe a difficult population to survey?

Carrie Farmer: It is a very difficult population to survey. There is no one database of all contractors utilized around the world, nor even of all contractors utilized in the US. The industry is very diverse, there are a very large number of companies at play in the industry, and there is also a very large number of clients, so getting your hands around the industry as a whole in terms of data availability just on any research related to private military and security contractors is very, very difficult. This is one of the largest known surveys of the population out there on any topic. I only know of one larger survey of this population that was done to look at their transition back to civilian life, and that was of several thousand contractors.

Michelle Harven: And I feel like one of the things that I've been hearing as well talking to people is that contractors are often treated like they're expendable. Do you feel like this is why maybe health should be looked at a little bit more?

Molly Dunnigan: Well, this sort of gets at the issue that I was speaking about earlier, that there is somewhat of a societal impulse to think of contractors as "money hungry mercenaries", and we see this frequently in commentary and comments on some reports that have been written on this population, and the fact is at this point that contractors are one of the three critical tripartite pieces of the US total force as written in US Department of Defense Doctrine of Policy right now. So that policy sets out that the military contractors and Department of Defense civilians are all together forming the Department of Defense "total force". So if you think about it that way, they really are a critical piece of US defense forces, and if you're going to incorporate them into US policy in that way, you need to think about treating them as civilians and military working for the US government are also being treated.

Molly Dunnigan: I think one of the risks of not doing so, and we didn't go into this too much in the study, is that you have extensive contractor deployments going to very high risk areas, and if these contractors are deployed and not seeking treatment for issues that they're currently experiencing while deployed, you have potential risks of incidents happening. PTSD is in some ways linked to decreased occupational functioning, which is not ideal in a very high stress combat environment. So interestingly, while we have quite a bit of debate about the

legal issues surrounding contractors' regulatory issues and accountability issues and what laws we can put into place to hold them accountable for crimes perpetuated in theater, we're also stigmatizing any availability of access to care for them for issues that they may be seeking that may be somehow driving issues that we want to hold them accountable for. So again, it's a vicious cycle, and I think we need to cut it off at the beginning and start fresh with some of those things.

Michelle Harven: Thanks to Doug Grauel for giving us a lawyer's take on the Defense Base Act, and thanks to Molly Dunnigan and Carrie Farmer for sharing their research.

Desmon Farris: In the next episode, we hear from Cindy Waldron, who talks about what it was like driving a truck through war-torn Iraq.

Cindy Waldron: Being a truck driver in Iraq was one of the most dangerous contracting jobs you could have, other than probably security. No, we didn't carry guns. No, we didn't purposely put ourselves in harms way like the military did, and all do respect to that, but we were ... we ate, we slept, we run the roads with the military. We were on the same roads that they were getting shot at, we were getting shot at. We were getting shot at, we were getting wounded, and we were dying out there on the same roads that military personnel were doing it as well.

Desmon Farris: Don't forget to subscribe. And while you're there, leave us a review. You can also let us know your thoughts at Podcast@Stripes.com. Also, follow us on Twitter for updates @StarsandStripes.

Michelle Harven: Force for Hire's supervising editors are Bob Reed and Terry Leonard. Digital team lead and editor is Michael Darnell.

Desmon Farris: Thanks for listening. This is Force for Hire.

Michelle Harven: This is Force for Hire.

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